

IN THE WATER COURT OF THE STATE OF MONTANA  
UPPER MISSOURI DIVISION  
JEFFERSON RIVER BASIN (41G)  
PRELIMINARY DECREE

\* \* \* \* \*

CLAIMANTS: Cheryl A. McCauley; Daniel M.  
McCauley

**CASE 41G-0539-R-2022**  
41G 7282-00

OBJECTOR: United States of America (USDA Forest  
Service)

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

## **MASTER'S REPORT**

### **FINDINGS OF FACT**

1. Claim 41G 7282-00 appeared in the 41G Preliminary Decree. It is a mining claim owned by Cheryl McCauley and Daniel McCauley. Claim 41G 7282-00 received an objection from the United States Department of Agriculture Forest Service (the United States).

2. On March 9, 2023, the parties filed a Stipulation that resolves the United States' objection. The Stipulation requests that the point of diversion be modified from the NW of Section 8, T2S, R3W to the SWNWNE of Section 8, T2S, R3W. It asks that the place of use be modified from the NW of Section 8, T2S, R3W to the NWNE of Section 8, T2S, R3W.

3. The Stipulation also requests that the following information remark be added to the claim:

POINT OF DIVERSION AND PLACE OF USE ARE LIMITED TO PRIVATE LANDS  
WITHIN THE HARLEQUINN PLACER MINERAL SURVEY 6536.

4. The map attached to the statement of claim form for claim 41G 7282-00 was not to scale, likely resulting in the clerical errors in the place of use and point of diversion legal land descriptions. The corrections requested in the Stipulation are needed to reflect the historic use of the claim. The information remark is supported by the attachments to the statement of claim form and serves to provide clarifying information about the place of use and the point of diversion. The Stipulation is well supported by the information in the claim file and should be accepted by the court.

### **CONCLUSIONS OF LAW**

1. A properly filed claim of an existing right or an amended claim of existing right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the

water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

The information before the Court overcomes the prima facie status of the place of use and the point of diversion for claim 41G 7282-00 by a preponderance of the evidence.

2. The claimant of a water right claim may waive the advantage of § 85-2-227, MCA by requesting a reduction or limitation of an element of a water right claim. The water court may accept a claimant's requested reduction or limitation without further presentation of evidence unless there is an unresolved issue remark on the claim. Rule 17(c), W.R.Adj.R.

The requested addition of the information remark limiting the place of use and point of diversion to private land constitutes a limitation and should be accepted by the court.

3. Settlement agreements are subject to review and approval of the Water Court. Rule 17(a), W.R.Adj.R. The settlement documentation in this Case should be accepted by the Court.

### RECOMMENDATIONS

1. Claim 41G 7282-00 should be modified as provided above.

A Post Decree Abstract of Water Right Claim is served with the Report to confirm that the recommended modifications have been made in the state's centralized record system.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via Electronic Mail:**

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**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
JEFFERSON RIVER  
BASIN 41G**

**Water Right Number:** 41G 7282-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** CHERYL A MCCAULEY  
PO BOX 1137  
HELENA, MT 59624

DANIEL M MCCAULEY  
PO BOX 1137  
HELENA, MT 59624

**Priority Date:** SEPTEMBER 4, 1902

**Type of Historical Right:** USE

**Purpose (use):** MINING

**\*Flow Rate:** 1.00 CFS

**\*Volume:** THIS WATER RIGHT IS LIMITED TO THE VOLUME OF WATER HISTORICALLY USED FOR MINING PURPOSES.

**\*Source Name:** BEAR GULCH

**Source Type:** SURFACE WATER

**\*Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNWNE	8	2S	3W	MADISON

**\*Period of Diversion:** JUNE 1 TO OCTOBER 4

**Diversion Means:** OTHER DIVERSION

MEANS OF DIVERSION INCLUDES A STONE RACEWAY AND FLUME.

**\*Period of Use:** JUNE 1 TO OCTOBER 1

**\*Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NWNE	8	2S	3W	MADISON

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**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE ASSOCIATED WHICH MEANS THE RIGHTS SHARE THE SAME SOURCE.

7282-00 33319-00

POINT OF DIVERSION AND PLACE OF USE ARE LIMITED TO PRIVATE LANDS WITHIN HARLEQUINN PLACER MINERAL SURVEY 6536.